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**SUBSTITUTE SENATE BILL 5769**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Johnson and Goings)

Read first time 03/04/97.

1 AN ACT Relating to theft of property; amending RCW 9A.56.010,  
2 9A.56.160, 9A.56.140, and 9A.56.040; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9A.56.010 and 1995 c 92 s 1 are each amended to read  
5 as follows:

6 The following definitions are applicable in this chapter unless the  
7 context otherwise requires:

8 (1) "Appropriate lost or misdelivered property or services" means  
9 obtaining or exerting control over the property or services of another  
10 which the actor knows to have been lost or mislaid, or to have been  
11 delivered under a mistake as to identity of the recipient or as to the  
12 nature or amount of the property;

13 (2) "By color or aid of deception" means that the deception  
14 operated to bring about the obtaining of the property or services; it  
15 is not necessary that deception be the sole means of obtaining the  
16 property or services;

17 (3) "Access device" means any card, plate, code, account number, or  
18 other means of account access that can be used alone or in conjunction  
19 with another access device to obtain money, goods, services, or

1 anything else of value, or that can be used to initiate a transfer of  
2 funds, other than a transfer originated solely by paper instrument;

3 (4) "Deception" occurs when an actor knowingly:

4 (a) Creates or confirms another's false impression which the actor  
5 knows to be false; or

6 (b) Fails to correct another's impression which the actor  
7 previously has created or confirmed; or

8 (c) Prevents another from acquiring information material to the  
9 disposition of the property involved; or

10 (d) Transfers or encumbers property without disclosing a lien,  
11 adverse claim, or other legal impediment to the enjoyment of the  
12 property, whether that impediment is or is not valid, or is or is not  
13 a matter of official record; or

14 (e) Promises performance which the actor does not intend to perform  
15 or knows will not be performed((~~-~~));

16 (5) "Deprive" in addition to its common meaning means to make  
17 unauthorized use or an unauthorized copy of records, information, data,  
18 trade secrets, or computer programs;

19 (6) "Obtain control over" in addition to its common meaning, means:

20 (a) In relation to property, to bring about a transfer or purported  
21 transfer to the obtainer or another of a legally recognized interest in  
22 the property; or

23 (b) In relation to labor or service, to secure performance thereof  
24 for the benefits of the obtainer or another;

25 (7) "Wrongfully obtains" or "exerts unauthorized control" means:

26 (a) To take the property or services of another;

27 (b) Having any property or services in one's possession, custody or  
28 control as bailee, factor, pledgee, servant, attorney, agent, employee,  
29 trustee, executor, administrator, guardian, or officer of any person,  
30 estate, association, or corporation, or as a public officer, or person  
31 authorized by agreement or competent authority to take or hold such  
32 possession, custody, or control, to secrete, withhold, or appropriate  
33 the same to his or her own use or to the use of any person other than  
34 the true owner or person entitled thereto; or

35 (c) Having any property or services in one's possession, custody,  
36 or control as partner, to secrete, withhold, or appropriate the same to  
37 his or her use or to the use of any person other than the true owner or  
38 person entitled thereto, where such use is unauthorized by the  
39 partnership agreement;

1       (8) "Merchandise pallet" means a wood or plastic carrier designed  
2 and manufactured as an item on which products can be placed prior to or  
3 during transport to retail outlets, manufacturers, or contractors, and  
4 affixed with language stating "property of . . . ," "owned by . . . ,"  
5 or other markings or words identifying ownership;

6       (9) "Beverage crate" means a plastic or metal box-like container  
7 used by a manufacturer or distributor in the transportation or  
8 distribution of individually packaged beverages to retail outlets, and  
9 affixed with language stating "property of . . . . .," "owned by  
10 . . . . .," or other markings or words identifying ownership;

11       (10) "Owner" means a person, other than the actor, who has  
12 possession of or any other interest in the property or services  
13 involved, and without whose consent the actor has no authority to exert  
14 control over the property or services;

15       (~~(9)~~) (11) "Receive" includes, but is not limited to, acquiring  
16 title, possession, control, or a security interest, or any other  
17 interest in the property;

18       (~~(10)~~) (12) "Services" includes, but is not limited to, labor,  
19 professional services, transportation services, electronic computer  
20 services, the supplying of hotel accommodations, restaurant services,  
21 entertainment, the supplying of equipment for use, and the supplying of  
22 commodities of a public utility nature such as gas, electricity, steam,  
23 and water;

24       (~~(11)~~) (13) "Stolen" means obtained by theft, robbery, or  
25 extortion;

26       (~~(12)~~) (14) "Subscription television service" means cable or  
27 encrypted video and related audio and data services intended for  
28 viewing on a home television by authorized members of the public only,  
29 who have agreed to pay a fee for the service. Subscription services  
30 include but are not limited to those video services presently delivered  
31 by coaxial cable, fiber optic cable, terrestrial microwave, television  
32 broadcast, and satellite transmission;

33       (~~(13)~~) (15) "Telecommunication device" means (a) any type of  
34 instrument, device, machine, or equipment that is capable of  
35 transmitting or receiving telephonic or electronic communications; or  
36 (b) any part of such an instrument, device, machine, or equipment, or  
37 any computer circuit, computer chip, electronic mechanism, or other  
38 component, that is capable of facilitating the transmission or  
39 reception of telephonic or electronic communications;

1       (~~(14)~~) (16) "Telecommunication service" includes any service  
2 other than subscription television service provided for a charge or  
3 compensation to facilitate the transmission, transfer, or reception of  
4 a telephonic communication or an electronic communication;

5       (~~(15)~~) (17) Value. (a) "Value" means the market value of the  
6 property or services at the time and in the approximate area of the  
7 criminal act.

8       (b) Whether or not they have been issued or delivered, written  
9 instruments, except those having a readily ascertained market value,  
10 shall be evaluated as follows:

11       (i) The value of an instrument constituting an evidence of debt,  
12 such as a check, draft, or promissory note, shall be deemed the amount  
13 due or collectible thereon or thereby, that figure ordinarily being the  
14 face amount of the indebtedness less any portion thereof which has been  
15 satisfied;

16       (ii) The value of a ticket or equivalent instrument which evidences  
17 a right to receive transportation, entertainment, or other service  
18 shall be deemed the price stated thereon, if any; and if no price is  
19 stated thereon, the value shall be deemed the price of such ticket or  
20 equivalent instrument which the issuer charged the general public;

21       (iii) The value of any other instrument that creates, releases,  
22 discharges, or otherwise affects any valuable legal right, privilege,  
23 or obligation shall be deemed the greatest amount of economic loss  
24 which the owner of the instrument might reasonably suffer by virtue of  
25 the loss of the instrument.

26       (c) Whenever any series of transactions which constitute theft,  
27 would, when considered separately, constitute theft in the third degree  
28 because of value, and said series of transactions are a part of a  
29 common scheme or plan, then the transactions may be aggregated in one  
30 count and the sum of the value of all said transactions shall be the  
31 value considered in determining the degree of theft involved.

32       (d) Whenever any person is charged with possessing stolen property  
33 and such person has unlawfully in his possession at the same time the  
34 stolen property of more than one person, then the stolen property  
35 possessed may be aggregated in one count and the sum of the value of  
36 all said stolen property shall be the value considered in determining  
37 the degree of theft involved.

1 (e) Property or services having value that cannot be ascertained  
2 pursuant to the standards set forth above shall be deemed to be of a  
3 value not exceeding two hundred and fifty dollars;

4 (~~(16)~~) (18) "Shopping cart" means a basket mounted on wheels or  
5 similar container generally used in a retail establishment by a  
6 customer for the purpose of transporting goods of any kind;

7 (~~(17)~~) (19) "Parking area" means a parking lot or other property  
8 provided by retailers for use by a customer for parking an automobile  
9 or other vehicle.

10 **Sec. 2.** RCW 9A.56.160 and 1995 c 129 s 15 (Initiative Measure No.  
11 159) are each amended to read as follows:

12 (1) A person is guilty of possessing stolen property in the second  
13 degree if:

14 (a) He or she possesses stolen property other than a firearm as  
15 defined in RCW 9.41.010 which exceeds two hundred fifty dollars in  
16 value but does not exceed one thousand five hundred dollars in value;  
17 or

18 (b) He or she possesses a stolen public record, writing or  
19 instrument kept, filed, or deposited according to law; or

20 (c) He or she possesses a stolen access device; or

21 (d) He or she possesses ten or more stolen merchandise pallets, or  
22 ten or more stolen beverage crates, or a combination of ten or more  
23 stolen merchandise pallets and beverage crates, as defined under RCW  
24 9A.56.010; or

25 (e) He or she possesses a stolen motor vehicle of a value less than  
26 one thousand five hundred dollars.

27 (2) Possessing stolen property in the second degree is a class C  
28 felony.

29 **Sec. 3.** RCW 9A.56.140 and 1987 c 140 s 3 are each amended to read  
30 as follows:

31 (1) "Possessing stolen property" means knowingly to receive,  
32 retain, possess, conceal, or dispose of stolen property knowing that it  
33 has been stolen and to withhold or appropriate the same to the use of  
34 any person other than the true owner or person entitled thereto.

35 (2) The fact that the person who stole the property has not been  
36 convicted, apprehended, or identified is not a defense to a charge of  
37 possessing stolen property.

1 (3) When a person (~~not an issuer or agent thereof~~) has in his or  
2 her possession, or under his or her control, stolen access devices  
3 issued in the names of two or more persons, or ten or more stolen  
4 merchandise pallets, or ten or more stolen beverage crates, or a  
5 combination of ten or more stolen merchandise pallets and beverage  
6 crates, as defined under RCW 9A.56.010, he (~~shall be~~) or she is  
7 presumed to know that they are stolen.

8 (~~This~~) (4) The presumption (~~may be rebutted~~) in subsection (3)  
9 of this section is rebuttable by evidence raising a reasonable  
10 inference that the possession of such stolen access devices,  
11 merchandise pallets, or beverage crates was without knowledge that they  
12 were stolen.

13 **Sec. 4.** RCW 9A.56.040 and 1995 c 129 s 12 are each amended to read  
14 as follows:

15 (1) A person is guilty of theft in the second degree if he or she  
16 commits theft of:

17 (a) Property or services which exceed(~~(s)~~) two hundred and fifty  
18 dollars in value other than a firearm as defined in RCW 9.41.010, but  
19 does not exceed one thousand five hundred dollars in value; or

20 (b) A public record, writing, or instrument kept, filed, or  
21 deposited according to law with or in the keeping of any public office  
22 or public servant; or

23 (c) An access device; (~~or~~)

24 (d) A motor vehicle, of a value less than one thousand five hundred  
25 dollars; or

26 (e) Ten or more merchandise pallets, or ten or more beverage  
27 crates, or a combination of ten or more merchandise pallets and  
28 beverage crates, as defined under RCW 9A.56.010.

29 (2) Theft in the second degree is a class C felony.

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